

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA and the)	
STATE OF NEW YORK <i>ex rel.</i> SHELIA)	
McCAFFERY,)	
)	
Plaintiffs,)	
)	Civil Action No. 5:15-cv-266
v.)	(MAD/TWD)
)	
FLAUM EYE INSTITUTE and THE)	STIPULATION AND
UNIVERSITY OF ROCHESTER MEDICAL)	[PROPOSED] ORDER OF
CENTER,)	DISMISSAL
)	
Defendants.)	
)	

STIPULATION AND [PROPOSED] ORDER OF DISMISSAL

WHEREAS, on June 7, 2017, the United States and the State of New York filed notices of election to intervene in that part of the above-captioned *qui tam* action as alleged that Defendants violated the False Claims Act by submitting claims for payment pursuant to Modifier 25 when the use of such modifier was not appropriate;

WHEREAS, on June 7, 2017, the United States and the State of New York filed settlement agreements that each had entered into with the University of Rochester and Relator Shelia McCaffery (collectively, the “Settlement Agreements”);

WHEREAS, the University of Rochester has made payment to the United States and the State of New York in accordance with the terms of the respective Settlement Agreements and has made any other payments set forth in the respective Settlement Agreements;

WHEREAS, the United States and the State of New York has or will pay Relator her share of the settlement proceeds in accordance with the terms of the Settlement Agreements;

WHEREAS, through the Settlement Agreements, the United States and the State of New York released the University of Rochester, together with, *inter alia*, its affiliates and divisions,

from “Covered Conduct,” as defined in those agreements and according to terms set out therein, and the United States and State of New York agreed to dismiss this action with prejudice as to the Covered Conduct and without prejudice in all other respects;

WHEREAS, through the Settlement Agreements, Relator released the University of Rochester, together with, *inter alia*, its affiliates and divisions, from any and all claims under the False Claims Act, among other claims, and Relator agreed to dismiss this action with prejudice as to Relator;

WHEREAS, the University of Rochester provides health care through its medical school and hospital, which together are commonly known as the University of Rochester Medical Center, to include ophthalmology services at what is known as the Flaum Eye Institute, and neither the University of Rochester Medical Center nor the Flaum Eye Institute is a distinct legal entity incorporated separately from the University of Rochester;

NOW, THEREFORE, it is hereby stipulated and ORDERED that:

Pursuant to Federal Rule of Civil Procedure 41, this case is dismissed in its entirety: (a) with prejudice as to the United States and the State of New York only with respect to the Covered Conduct as defined in the Settlement Agreements and without prejudice to the United States and the State of New York in all other respects; and (b) with prejudice as to the Relator.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE BELOW]

IT IS SO ORDERED:

Dated: _____, 2017

Hon. Mae A. D'Agostino
United States District Judge

Stipulated and agreed to by:

UNITED STATES OF AMERICA

RICHARD S. HARTUNIAN
United States Attorney

Dated: June 27, 2017

/s/ Michael D. Gadarian
Michael D. Gadarian
Assistant United States Attorney
Bar Roll No. 517198

STATE OF NEW YORK

ERIC T. SCHNEIDERMAN
Attorney General for the State of New York

Dated: June 27, 2017

/s/ Paul R. Berry
Paul R. Berry
Special Assistant Attorney General
Bar Roll No. 515854

UNIVERSITY OF ROCHESTER

Dated: June 27, 2017

/s/ Brian M. Feldman
Brian M. Feldman
Bar Roll No. 517328
Harter, Secrest & Emery, LLP
Attorneys for the University of Rochester

THE RELATOR

Shelia McCaffrey

Dated: June 27, 2017

/s/ Jonathan W. Ferris
Jonathan W. Ferris
Bar Roll No. 519000
Thomas and Soloman, LLP
Attorneys for Relator